



SENATE REPUBLICAN

POLICY COMMITTEE

Conference Report Highlights

July 31, 2008

Highlights of the Conference Report to Accompany H.R. 4040, the Consumer Product Safety Improvement Act of 2008

The Conference Report, H. Rept. 110-787, was filed on July 29, 2008.

Noteworthy

- In 1972, Congress passed the Consumer Product Safety Act (CPSA), which created the Consumer Product Safety Commission (CPSC or Commission), to protect the public against unreasonable risks associated with consumer products.
- The President's FY2009 budget proposed funding of \$80 million to operate the Commission. The conference report authorizes funding for the Commission in the amount of \$118.2 million for FY2010 and increasing to \$136.409 million in FY2014.
- A series of high-profile nationwide recalls of noncompliant products, including many imported from China, have driven consumer concerns over product safety.
- In response, the Senate-passed the Consumer Product Commission Reform Act (S. 2663) on March 6, 2008, as an amendment to the House bill (H.R. 4040).
- The conference report establishes standards for children's products, including a new limit for lead, mandatory third party testing, and tracking labels for children's products.
- The conference report contains a number of important changes from the Senate-passed bill, including with respect to the consumer products database which now allows manufacturers to respond to complaints related to their products and product safety intervention by states' attorneys general by limiting the kind of relief an attorney general can seek and eliminating one way fee shifting.
- The House adopted the Conference Report by a vote of 424-1 on July 30, 2008.

Background

Creation and Mission

Passage of the Consumer Product Safety Act (CPSA) of 1972 established the Consumer Product Safety Commission (CPSC or Commission) as an independent federal health and safety regulatory agency. Its missions include: protecting the public against unreasonable risks of injury associated with consumer products; assisting consumers in evaluating the comparative safety of consumer products; developing uniform safety standards for consumer products (and minimizing conflicting state and local regulations); and promoting research and investigation into causes for, and prevention of, consumer products-related deaths, illnesses, and injuries. The Commission enforces the CPSA and several additional statutes, including the Federal Hazardous Substances Act (15 U.S.C. 1261) (FHSA); the Flammable Fabrics Act (15 U.S.C. 1191) (FFA); and the Poison Prevention Packaging Act (15 U.S.C. 1471) (PPPA).

Employees, Staff, and Budget

The CPSC employs approximately 400 full-time employees (FTEs). With this workforce, the Commission pursues its mission by working with industry to develop voluntary standards, conducting research, and securing recalls of products deemed unsafe or making arrangements for product repair. Funding for the CPSC remained essentially flat for FY 2005 through FY 2007; staff levels have decreased by 31 FTEs in FY 2006 and approximately 20 FTEs in FY 2007. The Consolidated Appropriations Act of 2008 contained \$80 million for the operation of the CPSC for FY2008. The president's FY2009 budget proposed to fund 401 FTEs, and to provide \$80 million to operate the agency.

Consumer Product Safety

A series of high-profile nationwide recalls of noncompliant products, including many imported from China, have driven increased public scrutiny in consumer product safety generally and prompted some to call for the strengthening and overhaul of the consumer product safety system. The conference report contains provisions meant to address a series of challenges presented by these incidents and generally by the rapidly proliferating flow of millions of consumer products manufactured both in the United States and abroad. The final report significantly increases the authorized level of funding at CPSC. As noted, CPSC was most recently funded at \$80 million. The final report increases the funding level for the Commission to \$118.2 million for FY2010 and increasing up to \$136.409 million in FY2014.

Conference Report Provisions

Title I – Children’s Product Safety

- Title I of the conference report establishes standards related to children’s product safety, including a new limit for lead, mandatory third party testing, and tracking labels for children’s products.
 - With respect to lead safety standards for children’s products, within 180 days after enactment manufacturers and private labelers must comply with a standard of 600 parts per million (ppm) in total lead weight. The standard is reduced to 300 ppm after one year, and to 100 ppm if technically feasible three years after enactment. The final report retains a provision providing for an exception to the new lead standards for products with lead in inaccessible components and for certain electronic devices. Finally, the report reduces the level of acceptable lead in paint on certain consumer products in current law and provides the Commission the flexibility to study and use alternative screening technologies to measure lead in paint on small surfaces.
 - With respect to mandatory third party testing for children’s products, every manufacturer of a product subject to a consumer product safety rule is required to certify that such product has been subjected to a reasonable testing program and that the product complies with applicable standards and regulations.
 - Section 106 establishes mandatory toy safety standards, incorporating existing international standards by reference, as if issued by the Commission. This section also permits states to petition for an exemption to the federal preemption of state safety standards provided that the state safety standard provides a “significantly higher degree” of protection from injury and the preemption does not unduly burden interstate commerce.
 - The Senate-passed bill contained a number of single product hazard standards ranging from garage door openers and gas cap safety to phthalates and equestrian helmets. The conference report language does not require the CPSC to establish standards for most of these (which are now only discussed in the Statement of Managers). The final report also contains a compromise on the controversial issue of phthalates. The Senate-passed bill extended a California ban on six specific phthalates and a prescribed set of limits on alternatives to the rest of the country. The final report provides for a ban on several phthalates previously banned by voluntary agreement. Additional phthalates, including diisononyl phthalate (DINP), will be subject to an interim ban if the concentration exceeds a certain level in products that can be placed in the mouth. The CPSC will conduct a Chronic Hazard Advisory Panel (CHAP) to examine the evidence relating to these phthalates. The CHAP will report to the CPSC and the Commission shall engage in a final rulemaking to determine whether to lift the interim ban or provide for a permanent

ban. The compromise in the final report is preemptive of some aspects of state bans, including California, but does allow a state to prohibit the use of certain alternatives to phthalates on a limited basis.

Title II – Consumer Product Safety Commission Reform

- The conference report reauthorizes the Commission at the following levels:
 - \$118.2 million for FY2010;
 - \$115.64 million for FY2011;
 - \$123.994 million for FY2012;
 - \$131.783 million for FY2013; and
 - \$136.409 million for FY2014.

The conference report further authorizes increased spending levels for the Consumer Product Safety Commission, provides for additional staff for the CPSC, provides employees of private sector firms with certain whistleblower protections, and provides for increased civil fines.

- The conference report also provides limited authority for state attorneys general to initiate actions seeking injunctive relief for violations of certain provisions of the CPSA and requires the CPSC to establish a database of consumer product-related incidents. These provisions were part of the Senate-passed bill, but were modified significantly during conference negotiations.
 - The conference report makes significant changes to the database of consumer product-related incidents contained in the Senate-passed bill. The final report provides the CPSC a two year implementation time table (as opposed to one year in the Senate-passed measure) and includes measures to improve the quality of submissions, to provide manufacturers and private labelers an opportunity to investigate and respond to submissions, and the opportunity to request that the CPSC include their responses in the database.
 - The Senate-passed bill included authority for state attorneys general to seek injunctive relief and to initiate actions interpreting CPSC regulations. The measure also included a one-way fee shifting arrangement under which a victorious AG could receive court costs and attorney fees, but a victorious defendant could not. The conference report limits the AG authority to injunctive actions and eliminates the one way fee shifting. The arrangement reverts to the rules of civil procedure, permitting either victorious party to pursue cost recovery from the court.
 - The final report also includes a comprehensive notice requirement. An AG must provide written notice to the CPSC before commencing action and must wait at least 30 days to file unless the CPSC consents to an earlier action or the AG can demonstrate that there is a “substantial product hazard” as defined in the Act. This limits the ability

of an AG to bring actions without first notifying the CPSC to those cases in which there is an objectively determined hazard posing an unreasonable risk of death or serious injury.

- The Senate-passed bill included significant expansions of whistleblower protections for employees of manufacturers and private labelers, as well as for public employees (local, state, and federal). The conference report eliminates the whistleblower provisions with respect to all public employees.

Administration Position

At the time of publication of this Legislative Notice, the Administration had not issued a Statement of Administration Policy (SAP).